built on boats and designed for transportation.[4] In considering the third point, the nature and extent of the waters on which this canal boat was employed, the court had only to follow a precedent they had themselves established in a case which arose from a collision on the Chicago canal.[5] After the admiralty jurisdiction had once been extended to non-tidal waters,[6] thus departing from the old English doctrine, there seems no logical stopping place short of the point the court has reached. That this waterway was artificial cannot be decisive against the jurisdiction. Most of the channels into ocean ports are kept open by dredging, and navigation on many of our great rivers is rendered practicable only by artificial means. That transactions on these waters are not within the view of the admiralty courts would hardly be contended.

The decision of the court, then, seems sound. That unusual interest attaches to the case arises not so much from the fact that it involves any single point of great difficulty, as from the combination of extreme features which it presents. After this decision there seems open to the court but one reasonable limitation on the extent of the admiralty jurisdiction, a limitation which will probably be sustained should occasion arise. Where a body of water is entirely within a single state, and forms no part of a highway connecting different states, or opening on the high seas, it would seem unnecessary and profitless for the federal courts to assert their exclusive admiralty jurisdiction.

DECLARATIONS TO PROVE NON-ACCESS. — It is a rule of long standing that a child born in wedlock is presumed legitimate.[1] This presumption even extends to a child born so shortly after marriage that conception must have taken place before.[2] It has also been commonly held that a husband and wife cannot, in order to rebut the presumption of legitimacy, testify to non-access in order to prove the bastardy of issue which has been conceived during the marriage.[3] A number of United States decisions have extended this rule to the case of children conceived before marriage but born after marriage, upon the ground, apparently, that as the presumption of legitimacy applies to such children, the rule of evidence should apply also.[4] The rule excluding testimony of non-access is commonly said to be founded on considerations of "decency, morality, and policy." The marriage of a man to a pregnant woman may perhaps in the great majority of cases be fairly taken to constitute an acknowledgment that the child is his. The law in presuming the child to be his acts apparently upon such grounds.[5] In this aspect of the case it may possibly seem that decency and policy require that a husband and wife remain unquestioned as to their intercourse before marriage. But there is good ground for an opposite view. Decency, morality, and policy may well require that a husband and wife be forbidden to testify to non-access during the married state, because such protection

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[4] The Public Baths, No. 13, 61 Fed. Rep. 692.
[5] *Ex parte* Boyer, 109 U. S. 629.
[6] The Genesee Chief, 12 How. (U. S.) 443.

[1] Co. Lit. 244 *a*.
[2] King *v.* Luffe, 8 East 193.
[3] Goodright *d.* Stevens *v.* Moss, Cowp. 592.
[4] Dennison *v.* Page, 29 Pa. St. 420; Rabeke *v.* Baer, 115 Mich. 328.
[5] King *v.* Luffe, *supra*.

is deemed necessary to the sanctity of married intercourse. To accomplish this protection, however, it is not necessary to prevent a husband from testifying against a presumption that he seduced his wife before he married her, or to prevent a wife from testifying that she was not seduced by the husband. Moreover cases undoubtedly have arisen, and may arise, where it would be unreasonable to suppose that the husband knew of his wife's condition at the time of marriage. To exclude the testimony in question in such a case might involve a grave injustice both to the husband and to the real heirs. In a case which recently came up before the House of Lords, it being shown that a child was born six months after marriage, and the jury being satisfied by expert testimony that conception must have taken place before marriage, it was sought to introduce a deposition by the husband that before he married his wife he had never had sexual intercourse with her, and that soon after she confessed that at the time of marriage she was with child by another man. Although urged that this was testimony of the parents to non-access, the evidence was held admissible, and a former English authority [6] overruled. *The Poulett Peerage*, [1903] A. C. 395. The case is defensible upon the grounds indicated above, and its result seems preferable to that reached in the United States decisions.

THE GARNISHMENT OF A DEBT. — Jurisdiction to garnish a debt not payable at a particular place, according to some cases, cannot be gained without personal service on the creditor.[1] These cases are overruled by the decision of the Supreme Court of the United States in Chicago, etc., R. R. Co. *v.* Sturm,[2] which holds that service on the garnishee alone, obtained in the state of his domicile, gives jurisdiction. That decision was based on reasoning and *dicta* which would allow jurisdiction irrespective of domicile wherever such service is obtained, — a view adopted by some previous cases.[3] The rejection of these *dicta* in the recent West Virginia case of *Pennsylvania R. R.* v. *Rogers*, 44 S. E. Rep. 300, suggests an inquiry into the basis of jurisdiction in such cases.

A man not served with process may be deprived of his property only by a state having jurisdiction *in rem* of that property.[4] Jurisdiction *in rem* depends on power over the *res*. A state has power to control, by process of its courts, physical objects within its territorial limits. It is for this reason [5] that, aside from considerations of comity, the sole test of jurisdiction of a corporeal *res* is its physical *situs*. As to an incorporeal *res* there is no such simple test, since an intangible thing can clearly have no actual physical *situs*. To declare, as the courts are fond of doing, that a debt has a *situs* in a particular place can amount only to saying that it will be treated, for purposes of jurisdiction, as a tangible *res* would be treated if it had such a *situs*. Legislative or judicial fiat cannot alone create jurisdiction. Such a declaration, therefore, is justified only if the state has in fact the same power to control the debt as to control a tangible *res* whose *situs* is within its territory.

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[6] Anon. *v.* Anon., 22 Beav. 481; 23 Beav. 273.

[1] See cases collected in Minor, Confl. of L., § 125.
[2] 174 U. S. 710.
[3] Collected in Minor, Confl. of L., § 125.
[4] Pennoyer *v.* Neff, 95 U. S. 714.
[5] See Sutherland *v.* Nat'l Bank, 78 Ky. 250.